

## **SUBJECTS**

With this Bulletin for the Multifamily Seller/Servicer Guide (Guide), we are:

- Adding provisions for compliance with the regulations of the Federal Housing Finance Agency (FHFA) Suspended Counterparty Program and making changes to our provisions for compliance with the requirements of the Office of Foreign Assets Control (OFAC)
- Updating our requirements for Seismic Risk Assessments to announce the use of Elevated Seismic Hazard Regions and to add ASTM Standard E2557-07
- Revising our requirements regarding commercial leases, estoppel certificates and SNDAs
- Adding requirements applicable to non-profit Borrowers and Borrower Principals
- Adding our requirements for Properties benefiting from tax abatements
- Revising our eligibility requirements for property management companies
- Modifying the process for changing a property management company
- Revising our requirements for cap deposits and Reserve Custodial Accounts
- Revising our requirements for the timing of first monthly accounting report following the month of the Freddie Mac Funding Date
- Modifying our requirements for the management of a Borrower that consists of tenants in common
- For non-SBL Mortgages, increasing the amount of the Borrower's permitted financial obligations under the telecommunications and cable company agreement safe harbor category
- Updating Form 1120, Student Housing Questionnaire
- Clarifying Appraisal requirements for Lease-Up Loans
- Updating the underwriting checklist descriptions in Chapter 55 for Low-Income Housing Tax Credit (LIHTC) allocation and certification documentation and Form 1116, Real Estate Schedule
- Relocating the requirements for reviewing a telecommunications lease to Chapter 43

We are also revising Chapters 8, 9, 14, 16, 31, 41, 43 and 55 of the Small Balance Loan (SBL) Addendum to reflect these changes.

### Effective dates

The changes regarding OFAC compliance and compliance with the provisions of the FHFA's Suspended Counterparty Program are effective October 25, 2015. The changes to our requirements for seismic risk are effective for all Seller Applications dated on or after October 1, 2015. All other revisions announced by this Bulletin are effective immediately.

## Conclusion

More details on these changes are provided on the pages that follow. Guide text for the changes announced in this Bulletin is highlighted in green on AllRegs. If you have any questions about this Bulletin, please call your Freddie Mac representative.

Sincerely,

David Brickman  
Executive Vice President  
Multifamily

## Seller/Servicer Compliance with FHFA Suspended Counterparty and OFAC Regulations

The FHFA requires Freddie Mac to refrain from and/or cease conducting business with individuals and entities listed on the FHFA Suspended Counterparty Program List (SCP List) as “Named Parties”. Accordingly, Freddie Mac is requiring Seller/Servicers to establish and maintain procedures to ensure that they do not employ or contract with Named Parties for the origination, underwriting, or Servicing of a Freddie Mac Mortgage. The FHFA SCP List can be found on FHFA’s website.

At this time, Freddie Mac also is requiring Seller/Servicers to maintain an effective program to ensure compliance with OFAC regulations.

We have added Sections 2.23 and 2.24 to include these changes.

Freddie Mac is expanding its requirements to include screening against the OFAC Consolidated Sanctions List, in addition to screening against the Specially Designated Nationals and Blocked Persons (SDN) List. Screening requirements for the OFAC and SCP lists are outlined below.

### *At Origination and Underwriting*

Seller/Servicers must verify that Borrowers and Borrower Principals do not appear on the OFAC SDN List, the OFAC Consolidated Sanctions List or the FHFA SCP List. The Seller must submit an OFAC compliance certificate and an FHFA SCP compliance certificate with the underwriting package, as indicated on the underwriting checklists.

We have revised Sections 9.3 and 55.2, and have added Section 9.13, to reflect these changes. We have also revised Form 1115, Borrower and Borrower Principal Certificate.

### *With a Transfer of Ownership*

Freddie Mac is adding a description of the Seller/Servicer’s obligation to screen Borrowers and Borrower Principals involved in a Transfer of Ownership against the OFAC SDN List, the OFAC Consolidated Sanctions List, and the FHFA SCP List.

A Seller/Servicer that identifies a valid match against any of these lists must notify Freddie Mac and await instructions before approving or requesting approval for the Transfer of Ownership. The Seller/Servicer must submit an OFAC compliance certificate and an FHFA SCP compliance certificate to Freddie Mac with the post-transfer documentation and following the closing of a Transfer of Ownership.

See Sections 41.1(d), 41.3(c), and 41.6(g) for these requirements.

### *Specific Servicing Responsibilities*

Freddie Mac is now requiring Servicers to:

- Periodically screen the Borrowers and Borrower Principals of Mortgages serviced for Freddie Mac against the OFAC SDN and Consolidated Sanctions Lists

- Screen Borrowers and Borrower Principals against the OFAC SDN and Consolidated Sanctions Lists prior to approving, or requesting Freddie approval for, any Borrower request for lender consent to a transaction

If the Seller/Servicer identifies a valid match against either list, it must notify Freddie Mac and await instructions before approving or requesting approval from Freddie Mac for the transaction.

We have added Section 43.28 to the Guide and Section 43.29 to the SBL Addendum to contain these new requirements. We have also updated contact information in the Directory.

### *Delinquencies*

In Section 44.1(c), to reflect the changes found elsewhere in the Guide regarding OFAC compliance, we are

- Adding an OFAC compliance certificate to the list of documentation submitted with the Form 1101, Legal Referral Form
- Revising Form 1101 to reflect the OFAC changes

### Seismic Risk

We are now requiring a Seismic Risk Assessment (SRA) for Properties located in an “Elevated Seismic Hazard Region”. These regions, which we are defining as geographic locations with a horizontal Peak Ground Acceleration (PGA) equal to or greater than 0.15g, are highlighted on the Elevated Seismic Hazard Region Map, available on FreddieMac.com. After examining the map, if the Seller/Servicer conclusively determines that the Property is not located in an Elevated Seismic Hazard Region, an SRA is not required.

If the Property is located in an Elevated Seismic Hazard Region highlighted on the map, or if the Seller/Servicer is not sure whether the Property is located in an Elevated Seismic Hazard Region, the Seller/Servicer must use the United States Geological Survey (USGS) website to calculate the Property’s PGA as described in Section 16.2(b). If the Property’s PGA is equal to or greater than 0.15g, the Property is located in an Elevated Seismic Hazard Region.

- For non-SBL Properties located in an Elevated Seismic Hazard Region
  - A Level 0 SRA is required if the Property exhibits none of the seismic risk factors in Section 16.2(c).
  - A Level 1 SRA is required if the Property exhibits any of the seismic risk factors in Section 16.2(c), or if it cannot be determined whether the Property exhibits any of these risk factors.
- For an MHC Property, the requirement to provide an SRA may be waived at Freddie Mac’s discretion; see Section 22.6(b).
- For SBL Properties, a Level 1 SRA is required if the Property is located in an Elevated Seismic Hazard Region and exhibits any of the risk factors listed in Section 16.2(c).

If an SRA is required, the Seller/Servicer also must provide instructions to the Borrower for completing the Form 1117, Borrower Certification of Physical and Environmental Property Condition. Form 1117 is now in Excel format and can be found on FreddieMac.com.

Throughout Chapter 16, we are indicating that our requirements rely on ASTM Standard E2557-07 in addition to ASTM Standard E-2026-07 and the Guide. We are adding Utah as an acceptable registration State for the purposes of issuing engineering or architectural licenses.

These changes can be found in Sections 16.1, 16.2(a), 16.2(b), 16.2(c), 16.3, 16.4, 16.5, 16.6, 16.8, 16.9 and 16.11(a). In addition, we are revising Sections 8.14, 14.4, 14.5(a), 14.6(a), 22.6(b), 31.5, 31.9(b) and 55.2 to reflect these changes, as well as the following documents:

- Underwriting checklists for non-SBL Mortgages
- Form 1105, Property Condition Assessment
- Form 1117, Borrower Certification of Physical and Environmental Property Condition
- Form 1117, Borrower Certification of Physical and Environmental Property Condition – SBL

### Commercial Leases

Freddie Mac is introducing new commercial lease requirements with respect to commercial lease analyses; subordination, nondisturbance and attornment agreements (SNDAs); and tenant estoppels.

Commercial lease analyses are generally required only for leases which comprise at least five percent of the gross potential rent of the Property, although Freddie Mac may request additional Commercial Lease Analyses on a case-by-case basis.

An SNDA is not automatically required for a commercial lease. Section 8.11(d) provides a list of circumstances that may lead Freddie Mac to request an SNDA. Seller's counsel must state in the PLIM (or an update to the PLIM) whether any of these circumstances are applicable, and must recommend the execution of an SNDA upon identification of any other similarly unique instances in which an SNDA would be advisable for Freddie Mac.

For non-SBL Mortgages, Freddie Mac may require a tenant estoppel for a commercial lease on a case-by-case basis, and always requires the Seller to provide a tenant estoppel, executed by the applicable tenant, when:

- A commercial lease individually accounts for five percent or more of gross potential rent, or
- Income from all commercial leases is 10 percent or more of gross potential rent, for each commercial lease which covers more than 1000 square feet.

Section 8.11(c) provides a list of items that tenant estoppels, if required, must confirm or explain. If an issue is identified in a tenant estoppel, the Seller's counsel must update or supplement the PLIM to include a description of the issue and the Seller's counsel's analysis and recommendations for addressing the issue.

The updated provisions also require the subordination of a commercial lease between the Borrower and an Affiliate of the Borrower or any Borrower Principal to the lien of the Mortgage unless the lease contains a provision for termination by the owner of the Property with or without cause on 30 days' notice and without payment of a fee or penalty.

For non-SBL Mortgages, the requirements concerning telecommunications systems leases, licenses or agreements are now found in 8.11(f). There have been no changes to these requirements.

For complete details on these changes see Sections 8.11(a)-(f) and Section 55.2.

## Non-profit Borrowers and Borrower Principals

We are adding requirements specific to non-profit Borrowers/Borrower Principals. These requirements do not apply to:

- Partnerships in States where a non-profit general partner is in place solely to satisfy the eligibility requirement for tax abatement or other benefits and there is a qualified Borrower Principal in addition to the non-profit general partner
- SBL Mortgages

The Seller/Servicer must evaluate each Borrower/Borrower Principal on its capacity to perform its function (for example, acquisition, asset management, property management, etc.). The Seller/Servicer must apply a higher standard when the non-profit Borrower/Borrower Principal is involved in a complex large-scale development rather than a simple small-scale development. When the non-profit Borrower Principal demonstrates a significant weakness in an evaluation criterion, Freddie Mac may require the funding of a Reserve to mitigate the risk. See Section 9.2(f)(2) for additional details.

The non-profit Borrower and/or Borrower Principal must have reasonable liquidity, working capital reserves appropriate for the proposed transaction and no material unmitigated contingent liabilities.

There are also specific requirements for non-profit Borrowers/Borrower Principals concerning years of experience and the number of properties that they own and manage in the Property's location. The non-profit Borrower/Borrower Principal must not have any unresolved internal control issues, compliance findings, issues of integrity or conflicts of interest.

Section 9.2(f) has been added to include these changes. We are revising the description for financial statements of Borrowers and Borrower Principals in Section 55.2 to require the Seller to identify details regarding the primary funding sources of the non-profit Borrower/Borrower Principal.

## Tax Abatement

Freddie Mac is including in the Guide its requirements for tax abatements, which apply to both TAH and conventional tax abatements with a remaining term of more than two years. As used in the Guide the term tax abatement covers a reduction of or exemption from taxes granted by a governmental body, and payment in lieu of taxes (PILOT).

### *Determining the Program Eligibility, Statutory Approval and Continuation of the Tax Abatement*

Seller/Servicers must determine tax abatement program eligibility, statutory approval, and the likelihood of continuation of the tax abatement.

- The tax abatement program is eligible if it appears on Freddie Mac's Approved Tax Abatement Programs by State list, available on FreddieMac.com. If there have been material changes to the tax abatement program as approved, the Seller/Servicer must seek Freddie Mac's approval of the program changes.
- The applicable statute for the tax abatement must be in force at the time the full underwriting package is submitted to Freddie Mac. For non-SBL Mortgages, if the statute is in force, but the Property has not been formally approved for the tax abatement, Freddie Mac may approve the

Mortgage subject to receipt of cash or a Letter of Credit equal to the additional Mortgage amount generated because the Property was underwritten using the tax abatement rather than full taxes. The funds will be held in escrow until State or local authority approval is received. If the request is denied, the funds will be used to prepay that portion of the loan.

- The Seller/Servicer must understand the length of the tax abatement, the requirements of the governing authority, and what happens to the tax abatement if the Property is transferred by sale or through foreclosure. If there is a concern that the tax abatement will not be maintained or may be forfeited, Freddie Mac will either underwrite the Mortgage using full taxes or reduce the Mortgage by an amount commensurate with the risk.

#### *Documentation for the Underwriting Package and Requesting Approval of a Tax Abatement Program*

The Seller/Servicer must include in the underwriting package the evidence of tax abatement documentation listed in Section 55.2. If the program does not appear on the Approved Tax Abatement Programs by State list, or the program has been substantially revised since Freddie Mac previously approved it, the Seller/Servicer must obtain approval from Freddie Mac by following the instructions provided in the Tax Abatement/Exemption/PILOT Questionnaire, found on the legal document pages on FreddieMac.com.

The Guide provides additional information about the refinance test and determining the DCR calculation for all Mortgages underwritten with tax abatement, depending on the phase-in period and the length of the tax abatement.

The tax abatement requirements can be found in Sections 8.18(a)-(e). We have also revised Section 55.2 to reference the Tax Abatement/Exemption/PILOT Questionnaire.

#### Eligibility Requirements for Property Management Companies

We are revising the eligibility requirements for property management companies. The Seller/Servicer must ensure that the property management company meets the requirements of the Loan Documents, and the Servicer must screen the following entities to ensure that they do not appear on the OFAC SDN List, the OFAC Consolidated Sanctions List, the FHFA SCP List, the Freddie Mac Exclusionary List, and the Multifamily Restricted Vendor List:

- The property management company
- Any owner of the property management company with an ownership interest of 25 percent or more
- Any individual exercising management and/or control over the operations of the property management company

For SBL Mortgages, a third party management company is required when the Borrower is an individual and resides more than 100 miles from the Property, or the Borrower is an entity and the individual with control over the Borrower resides more than 100 miles from the Property.

As part of our underwriting process, and as part of our review of a proposed replacement property management company if a change is requested, Freddie Mac will evaluate:

- The appropriateness of the management fee charged by the property management company
- For Properties entitled to Low Income Housing Tax Credits (LIHTC) or other forms of subsidy, whether the property management company has expertise in managing comparable properties

In addition to these changes, which can be found in Section 8.13, for non-SBL Mortgages we are adding a new form of Assignment to be used for new property management companies. The Assignment of Management Agreement and Subordination of Management Fees (New Property Manager) can be found on FreddieMac.com.

### Changing a Property Management Company

Freddie Mac review of a property management change is not required if the Mortgage is current, there is no Event of Default, and the Servicer delivers to Freddie Mac

- A summary of the new property manager's qualifications and experience
- An original Property Management Change Certification
- For non-SBL Mortgages, Assignment of Management Agreement and Subordination of Fees (New Property Manager)
- For non-SBL Mortgages, an updated nonconsolidation opinion if the new property manager is affiliated with the Borrower, and the Borrower was required to provide a nonconsolidation opinion at the origination of the Mortgage

If any one of these conditions is not satisfied, the Servicer must submit the request to Freddie Mac for approval, and must include in the documents submitted to Freddie Mac the Servicer's OFAC compliance certificate and the FHFA SCP compliance certificate as described in Section 55.2.

These changes can be found in Sections 43.19(a)-(c) of the Guide, and Sections 43.20(a)-(c) of the SBL Addendum.

### Reserve Custodial Accounts

We are modifying our requirements regarding a Servicer's duties to establish and maintain all Custodial Accounts required by the Loan Documents and the Purchase and Servicing Documents and to safeguard those accounts and any funds held for or owed to Freddie Mac.

- *Principal and Interest Custodial Account:* Section 52.3 remains unchanged. This Section requires a Servicer to establish, and maintain at all times, a principal and interest Custodial Account in a demand deposit account or interest-bearing deposit account in an eligible depository, separate from any Reserve Custodial Account and separate from any general ledger account. Section 52.3 identifies the monies that the Servicer must deposit in a principal and interest Custodial Account.
- *Reserve Custodial Account(s):* Section 52.4 has been revised and requires a Servicer to establish, and maintain at all times, one or more Reserve Custodial Accounts, separate from any principal and interest Custodial Account, and separate from any general ledger account, in an eligible depository.

We will no longer specify the number of Reserve Custodial Accounts that a Servicer must maintain. Rather, we are adding language requiring that the Servicer ensure an appropriate number of Reserve Custodial accounts are established to:

- Meet the requirements of the Guide, the Loan Documents and the Purchase and Servicing Documents, and to

- Enable the Servicer to properly account for, reconcile and report on all Reserve funds as required by Section 54.10 and 54.13.

We reserve the right to require that one or more of the funds in a Reserve Custodial Account be deposited in separate accounts if necessary to satisfy the requirements of the Guide, the Loan Documents, and the Purchase and Servicing Documents (including the Pooling and Servicing Agreement (PSA), and any other applicable documents, such as Reimbursement Agreements for bond credit enhancements).

- *Disbursement clearing Custodial Accounts:* Section 52.5 remains unchanged. This Section allows, but does not require, a Servicer to, establish and use a disbursement clearing Custodial Account. A Servicer that uses a disbursement clearing Custodial Account must establish each such account in a demand deposit account, separate from any general ledger account, in an eligible depository.

Sections 52.4 and 43.22(e) (Section 43.23(e) in the SBL Addendum), and Forms 1058, Letter Agreement for Servicer's Reserve Custodial Account, and 1060, Letter Agreement for Reserve Custodial Account, have been revised in support of this change.

#### Timing of the First Monthly Accounting Report

In Section 54.1(b), we are clarifying our requirements concerning the timing of the first accounting report, as follows:

- If the Freddie Mac Funding Date is on or after the first of the month and on or before the accounting cutoff date for the same month, the Servicer must submit the first monthly accounting report in the same month as the Freddie Mac Funding Date.
- If the Freddie Mac Funding Date is after the accounting cutoff date, the Servicer must submit the first monthly accounting report in the month following the month of the Freddie Mac Funding Date.

#### Tenancies-in-Common

We have revised the requirements that must be in a tenant in common agreement ("TIC Agreement") regarding the management of Property. These revisions bring the requirements into compliance with the requirements that were found in the document entitled "Tenant in Common Agreement – Minimum Requirements", previously posted in the legal documents section of FreddieMac.com. These changes will benefit tenant in common Borrowers trying to meet the federal tax rules regarding tenancies-in-common.

#### Telecommunications and Cable Company Agreement Safe Harbor Category

We are revising Section 29.2(e)(21) of the Guide to increase from \$50,000 to \$100,000 the amount of the Borrower's permitted financial obligations under the telecommunications and cable company agreement safe harbor category. This change does not apply to SBL Mortgages.

### Student Housing Questionnaire

Freddie Mac is updating Form 1120, Student Housing Questionnaire, to reflect updated requirements. The form is now in Excel and is available on FreddieMac.com.

### Appraisals for Lease-Up Programs

We are revising Section 12.27 of the Guide in response to Seller/Service questions. For a Property underwritten as an Acquisition Lease-Up or Refinance Lease-Up, the Appraisal must provide the as-is value of the Property as of the effective date of the Appraisal report and the prospective as-stabilized value as of the prospective future date of stabilized operations for the Property.

### Additional Changes to Underwriting Checklist Items

In addition to the changes discussed above to the descriptions of the OFAC and FHFA SCP compliance certificates, commercial lease documentation, and financial statements of non-profit Borrowers/Borrower Principals, we are also revising Section 55.2 to update the descriptions for

- Low-Income Housing Tax Credit (LIHTC) allocation and certification documentation
- Form 1116, Real Estate Schedule

### Telecommunications Agreements

We are relocating the requirements for reviewing a telecommunications agreement, including any requested subordination of the Mortgage to the agreement. These requirements can be found in Section 43.10(e) of the Guide and in Section 43.11(e) of the SBL Addendum.